

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 19th October, 2010*

+ **R.S.A.No.29/2001**

SMT.SHAKUNTALA DEVI & ORS. Appellants
Through: Mr.Sugriva Dubey, Advocate.

Versus

M/S MADADGAR CHIT FUND PVT. LTD. Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

1. This appeal is directed against the impugned judgment dated 12.10.2000 which had confirmed the finding of the Trial Judge dated 22.10.1990 whereby the award was made a Rule of Court.
2. The factual matrix of the case is as follows:
 - i. Smt.Shakuntala Devi had approached the plaintiff company for becoming a member of their chit fund. She was made a member subject to the condition of her producing two sureties i.e. defendant no.2 and defendant no.3. The advance amount required for membership was deposited by respondent no.1; instalments were to be paid by her. There was default; matter was referred to arbitration. The Sole Arbitrator pronounced the Award.

- ii. Plaintiff M/s Madadgar Chit Fund Pvt. Ltd. filed an application under Section 14/17 of the Indian Arbitration Act 1940 for making the Award dated 16.2.1988 pronounced by Mr.I.S Bakshi, the Sole Arbitrator as a Rule of the Court. Objections to the said award were filed by the respondents. They were rejected. The Award was made a Rule of Court on 22.10.1990.

3. On 12.10.2000 the first Appellate Court confirmed this finding.

4. This is a second appeal. After its admission, on 2.11.2004 the following substantial question of law was formulated. It reads as follows:

“Whether the Civil Court had jurisdiction to entertain the petition under Section 14 and 17 of the Arbitration Act, 1940 in view of Section 64(3) of the Chit Fund Act, 1982?”

5. On behalf of the appellant, it has been urged that the Madras Chit Fund Act 1961 (same as Tamil Nadu Chit Fund Act, 1961) had stood repealed by the Central Legislation i.e. the Chit Fund Act 1982 and this is clear from a reading of Section 90 of the said Act. It is pointed out that this chit agreement had been entered into between the parties in May 1985 wherein the parties had agreed to be governed by the Madras Chit Fund Act 1961 but in the year 1985 the Madras Chit Fund Act was not in existence; the entire proceedings are nonest. It is further pointed out that under Section 64(3) of the Chit Funds Act 1982, the jurisdiction of the Civil Court is ousted; this Section starts with a non-obstante clause; the Award could not have been made into a Rule of Court by the Civil Judge.

6. None has appeared for the respondent.

7. The Chit Funds Act 1982 is a Central Legislation which has

been enacted to provide for regulation of chits and for matters connected therewith. Under Section 90(1) the Tamil Nadu Act 1961 (as applicable in the State of Tamil Nadu and in the Union Territory of Chandigarh and Delhi) stood repealed; further the provisions of Section 6 of the General Clauses Act 1897 would apply to such a repeal. The Chit Fund Act 1982 was notified in the official gazette and was made applicable to the State of Tamil Nadu as also to the Union Territory of Delhi w.e.f. 13.4.1984. The date of the present transaction i.e. the chit agreement between the parties is of May 1985. Admittedly on that date the Madras Chit Fund Act, 1961 was not in operation; it was the Chit Funds Act 1982 which was the applicable provision.

8. It is, however, relevant to state that this argument had never been advanced before both the Courts below i.e. either in the objections which had been filed by the appellant in the proceedings where the Award was made a Rule of Court or before the first appeal Court. It was only for the first time in these proceedings that these objections have been raised. The points not urged before, before the two Courts below could not now be raised for the first time before this second appeal Court. In AIR 2000 SC 831 Union of India Vs. E.I.D. Parry (India) Ltd. Rule 1-A of the Goods Tariff Rules was struck down by the High Court on the ground that it was not in consonance with the provisions of Railways Act 1890; it was held ultra vires. This was in a second appeal. In this context the observations of the Supreme Court are relevant and read as follows:

“The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently

held that it was ultra vires. This view is contrary to the settled law that a question, which did not form part, of the pleadings or in respect of which the parties were not at variance and which was not the subject matter of any issue, could not be decided by the Court. The scope of the suit was limited. The pleadings comprising of the averments set out in the plaint and the defence put up by the present appellant in their written statement did not relate to the validity of the Rule struck down by the High Court. The High Court, therefore, travelled beyond the pleadings in declaring the Rule to be ultra vires. The judgment of the High court, therefore, on this question cannot be sustained.”

In 2001 JT (8) SC 645 Sheikh Farjan Mian (d) by LRs. Vs. Teju Sahu, the Supreme Court has reiterated that a plea which was not raised in the Courts below cannot be permitted to be raised in a second appeal.

9. The record shows that the appellant had voluntarily entered into a chit agreement with the plaintiff which was duly signed by the appellant; her sureties were appellant nos.2 and 3. Her defence all along was that she had paid back the instalments due to the Chit Fund Company and she was not liable to pay any further instalment. It was never the case of the appellant before the two Courts below that the parties were not governed by the Madras Chit Funds Act, 1961. The chit agreement had been duly exhibited before the Arbitrator. Clause 15 of the chit agreement specifically states that the parties will be governed in accordance with Section 12 of the Madras Chit Funds Act, 1961 as extended to the Union Territory of Delhi; further under Clause 17 disputes and matters of difference between the parties arising out of this agreement or the subject matter thereof shall be subject to the Delhi Courts Jurisdiction. The sole arbitrator Mr.I.S.Bakshi had pronounced his Award on 16.2.1988. An application under Sections 14 and 17 of Indian Arbitration Act 1940 was filed. Objections were filed by the

appellant. Record shows that the objections were not sufficiently stamped; the said objections were dismissed; the Award was made into a Rule of Court on 22.10.1990. The judgment and decree dated 22.10.1990 was confirmed by the first appeal Court on 12.10.2000. Even at that stage it was never the contention of the appellant that the parties are not governed by Madras Chit Fund Act, 1961 as applicable to the Union Territory of Delhi.

10. Further under Section 21 of the Indian Contract Act, 1872 a contract does not become voidable because it was contracted under a mistake as to any law in force in India. The illustration appended to this Section is also relevant. It reads as under:

“A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation; the contract is not voidable.”

This position has also been reiterated by Supreme Court in AIR 1976 SC 2243 Dhanyalakshmi Rice Mills & Ors. Vs. The Commissioner of Civil Supplies & Anr.. It is thus clear that in the instant case although both the parties had voluntarily entered into this chit agreement under the mistaken belief that the Tamil Nadu Chit Fund Act 1961 was still in operation; yet this mistake of law is not by itself a ground to make such a contract voidable. This is clear from a reading of Section 21 of the said Act.

11. Section 64 of the Chit Fund Act 1982 is contained in Chapter XII of the Act. This chapter deals with “Disputes and Arbitration”. It contains clauses 64 to 71. These clauses provide for a self-contained machinery for the settlement of disputes arising between the foreman and the subscribers, etc. The intention is to provide for a machinery for the settlement of disputes which is cheap and

expeditious. The provisions made in these clauses are on the lines of the machinery provided in the State Co-operative laws for the settlement of disputes between a society and its members by arbitration. This is contained in the objects and reasons of this enactment. Clause 64 provides for the reference of any dispute touching the management of a chit business to the award of the Registrar. Clause 65 provides for special periods of limitation in respect of disputes and empowers the Registrar to condone delay in referring the dispute within the prescribed period. Clause 66 enables the Registrar to settle the dispute himself or to refer it for disposal to his nominee. Clause 67 confers on the Registrar certain powers of a Civil Court. Clause 68 empowers the Registrar or his nominee to order conditional attachment of the property of a party to the dispute and any attachment so made shall have the same effect as an attachment made by a competent Civil Court. Clause 69 enables the Registrar to make an award after giving a reasonable opportunity to the parties to the dispute of being heard. Clause 70 provides for the appeal to the State Government against an award of the Registrar or his nominee. Clause 71 provides that where any order passed by the Registrar or his nominee is for payment of money, such order, on the issue of a certificate by the Registrar, be deemed to be a decree of a Civil Court. This self contained enactment provides the mechanism as to how the disputes arising between a subscriber and a foreman are to be dealt with.

12. After the appeal was admitted on 02.11.2004 substantial question of law was formulated. This substantial question of law has been reproduced hereinabove. It relates to the jurisdiction of

the Civil Court to entertain a petition under Sections 14 and 17 of the Arbitration Act 1940 in view of Section 64(3) of Chit Funds Act 1982.

13. Proceedings under Sections 14 and 17 of the Arbitration Act 1940 are proceedings which have a limited scope. No evidence, oral or documentary can be entertained in such a petition. The Court dealing with a petition under Sections 14 and 17 of the Arbitration Act does not go into merits of the claim of the parties. It is a circumscribed provision. The proceedings under these provisions of law is not a suit within the meaning of Section 86(1) read with Section 87(b) of the Code of Civil Procedure. This has been reiterated by Supreme Court in AIR 1965 SC 1978 Nawab Usmanali Khan Vs. Sagar Mal. The court is bound by the arbitrator's findings of fact and cannot review them; the Court is not sitting as a court of appeal; it cannot reappraise the evidence as if it is an appeal court sitting over the Arbitrator's Award. This has been held by a Bench of this Court in Arb LR 233 Delhi 1987(2) M/s Francis Klein & Co. P. Ltd. Vs. Union of India & Anr. The merits of the case and the documentary and oral evidence could not be re-examined and unless it is apparent on the face of the Award that the reasoning given by the arbitrator is perverse, the Award cannot be set aside. In JT 1989 (2) SC 285 Raipur Development Authority Vs. M/s Chokhamal Contractors, the Supreme Court had held that once an Award has been pronounced and decree has followed, no appeal shall lie from such a decree except on the ground that it is an excess of or not otherwise in accordance with the Award. Section 17 of the Indian Arbitration Act also clearly states so.

14. The merits and the demerits of the disputes between the parties entailing their detailed documentary and oral evidence was led before the Arbitrator pursuant to which he had pronounced his Award. It was only for the limited purpose for making the Award a Rule of Court that the petition under Section 14 and 17 of the Arbitration Act had been filed. If Section 64(3) is read in the manner in which the counsel for the appellant is urging, the entire Chapter XII of the Chit Funds Act 1982 would become a redundant provision. For an award which is pronounced by an Arbitrator is a mere piece of paper unless it is made a Rule of Court and for that limited purpose alone a petition under Sections 14 and 17 was filed. Bar of Section 64(3) of Chit Funds Act 1982 was not attracted.

15. Substantial question of law is answered accordingly. There is no merit in the appeal. It is dismissed.

INDERMEET KAUR, J.

OCTOBER 19, 2010
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